
A BILL FOR AN ACT

RELATING TO YOUNG ADULT OFFENDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that Hawaii is one of a
2 diminishing number of states that allows juveniles to be
3 sentenced to life imprisonment without the possibility of
4 parole. The United States is the only nation in the world that
5 still imposes life imprisonment without the possibility of
6 parole on juveniles, according to an article in the *Huffington*
7 *Post*, dated September 20, 2013.

8 The legislature also finds that recent decisions by the
9 United States Supreme Court have cast doubt upon the practice of
10 sentencing juveniles to life imprisonment without the
11 possibility of parole. In 2010, the United States Supreme Court
12 held in Graham v. Florida, 130 S. Ct. 2011 (2010), that
13 sentencing juveniles to life without parole for crimes not
14 involving murder violated the United States Constitution. In
15 2012, the United States Supreme Court held in Miller v. Alabama,
16 132 S. Ct. 2455 (2012), that sentencing juveniles to mandatory
17 life imprisonment without the possibility of parole for any
18 offenses violated the United States Constitution.



1 The legislature also finds that sentencing juveniles to
2 life imprisonment without the possibility of parole is
3 inconsistent with Hawaii's values. In 2007, the legislature
4 adopted H.C.R. 69, H.D. 2, "Urging the Adoption of the United
5 Nations' Convention on the Rights of the Child." Permanently
6 condemning one of Hawaii's citizens for a crime committed as a
7 juvenile does not reflect Hawaii's values as a state and does
8 not comport with Hawaii's expressed commitment to children's
9 rights.

10 The legislature further finds that many psychological
11 studies have shown that juveniles lack the neurological
12 development to appreciate the gravity and consequences of their
13 actions sufficiently to justify permanently condemning them to
14 imprisonment. Condemnation without subsequent review for
15 rehabilitation is an irrational and cruel punishment unsupported
16 by science and unjustified by morality.

17 Accordingly, the purpose of this Act is to remove any
18 possibility that an individual convicted of a crime committed
19 when the individual was a youth will result in the individual
20 being sentenced to life imprisonment without the possibility of
21 parole, and to provide expanded opportunities and resources for
22 young adult rehabilitation.



1 SECTION 2. Chapter 353C, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§353C- Young adult rehabilitation special fund. (a)
5 There is established the young adult rehabilitation special fund
6 to be administered by the department. The fund shall consist
7 of:

8 (1) Funds appropriated by the legislature; and
9 (2) Federal funds received by the State or through
10 executive order of the President of the United States
11 for the purpose of public safety or corrections;
12 provided that the acceptance and use of federal funds
13 shall not commit state funds for services and shall
14 not place an obligation upon the legislature to
15 continue the purpose for which the federal funds are
16 made available.

17 (b) The fund shall be used to provide the following
18 support services for rehabilitation of young adult defendants:

19 (1) Providing regular and consistent sessions with a
20 certified therapist for the young adult defendant,
21 until the young adult defendant reaches the first
22 parole hearing date;



- 1 (2) Providing appropriate services that address drug and
2 alcohol addiction; and
- 3 (3) Any other services deemed necessary and appropriate
4 for the purpose of young adult rehabilitation."

5 SECTION 3. Section 353-16, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§353-16 Transfer of committed felon to federal
8 institution. The director may effect the transfer of a
9 committed felon to any federal correctional institution for
10 imprisonment, subsistence, care, and proper employment of such a
11 felon[-]; provided that no young adult defendant as defined
12 under section 706-667 shall be transported out of state to serve
13 any portion of the defendant's imprisonment for an offense
14 committed and adjudicated in the State."

15 SECTION 4. Section 353-16.2, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) The director may effect the transfer of a committed
18 felon to any correctional institution located in another state
19 regardless of whether the state is a member of the Western
20 Interstate Corrections Compact; provided that the institution is
21 in compliance with appropriate health, safety, and sanitation
22 codes of the state, provides a level of program activity for the



1 inmate that is suitable, and is operated by that state, by any
2 of its political subdivisions, or by a private institution;
3 provided further that no young adult defendant as defined under
4 section 706-667 shall be transported out of state to serve any
5 portion of the defendant's imprisonment for an offense committed
6 and adjudicated in the State; and provided further that the
7 transfer is either:

- 8 (1) In the interest of the security, management of the
9 correctional institution where the inmate is presently
10 placed, or the reduction of prison overcrowding; or
11 (2) In the interest of the inmate."

12 SECTION 5. Section 706-656, Hawaii Revised Statutes, is
13 amended by amending subsection (1) to read as follows:

14 "(1) [~~Persons~~] Except as provided in section 706-667,
15 pertaining to young adult defendants, persons convicted of first
16 degree murder or first degree attempted murder shall be
17 sentenced to life imprisonment without possibility of parole.

18 As part of [~~such~~] the sentence the court shall order the
19 director of public safety and the Hawaii paroling authority to
20 prepare an application for the governor to commute the sentence
21 to life imprisonment with parole at the end of twenty years of
22 imprisonment; provided that persons who are repeat offenders



1 under section 706-606.5 shall serve at least the applicable
2 mandatory minimum term of imprisonment."

3 SECTION 6. Section 706-657, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§706-657 Enhanced sentence for second degree murder. The
6 court may sentence a person who has been convicted of murder in
7 the second degree to life imprisonment without possibility of
8 parole under section 706-656 if the court finds that the murder
9 was especially heinous, atrocious, or cruel, manifesting
10 exceptional depravity or that the person was previously
11 convicted of the offense of murder in the first degree or murder
12 in the second degree in this State or was previously convicted
13 in another jurisdiction of an offense that would constitute
14 murder in the first degree or murder in the second degree in
15 this State.

16 As used in this section, the phrase "especially heinous,
17 atrocious, or cruel, manifesting exceptional depravity" means a
18 conscienceless or pitiless crime which is unnecessarily
19 torturous to a victim and "previously convicted" means a
20 sentence imposed at the same time or a sentence previously
21 imposed which has not been set aside, reversed, or vacated.



1 Hearings to determine the grounds for imposing an enhanced
2 sentence for second degree murder may be initiated by the
3 prosecutor or by the court on its own motion. The court shall
4 not impose an enhanced term unless the ground therefor has been
5 established at a hearing after the conviction of the defendant
6 and on written notice to the defendant of the ground proposed.
7 Subject to the provision of section 706-604, the defendant shall
8 have the right to hear and controvert the evidence against the
9 defendant and to offer evidence upon the issue.

10 The provisions pertaining to commutation in section 706-
11 656(2), shall apply to persons sentenced pursuant to this
12 section.

13 Enhanced sentences for second degree murder shall not apply
14 to a young adult defendant, as defined in section 706-667."

15 SECTION 7. Section 706-667, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§706-667 Young adult defendants. (1) Defined. A young
18 adult defendant is a person convicted of a crime who, at the
19 time of the offense, is less than twenty-two years of age and
20 who has not been previously convicted of a felony as an adult
21 ~~[or adjudicated as a juvenile for an offense that would have~~



1 ~~constituted a felony had the young adult defendant been an~~
2 ~~adult~~].

3 (2) Specialized correctional treatment. A young adult
4 defendant who is sentenced to a term of imprisonment exceeding
5 thirty days may be committed by the court to the custody of the
6 department of public safety and shall receive, as far as
7 practicable, such special and individualized correctional and
8 rehabilitative treatment as may be appropriate to the young
9 adult defendant's needs.

10 (3) Special term. A young adult defendant convicted of a
11 felony, in lieu of any other sentence of imprisonment authorized
12 by this chapter, may be sentenced to a special indeterminate
13 term of imprisonment if the court is of the opinion that such
14 special term is adequate for the young adult defendant's
15 correction and rehabilitation and will not jeopardize the
16 protection of the public. When ordering a special indeterminate
17 term of imprisonment, the court shall impose the maximum length
18 of imprisonment, which shall be eight years for a class A
19 felony, five years for a class B felony, and four years for a
20 class C felony. The minimum length of imprisonment shall be set
21 by the Hawaii paroling authority in accordance with section 706-
22 669. During this special indeterminate term, the young adult



1 shall be incarcerated separately from career criminals, when
2 practicable.

3 (4) Murder or attempted murder. A young adult defendant
4 convicted of first degree murder or first degree attempted
5 murder shall be sentenced to life imprisonment with possibility
6 of parole. The minimum length of imprisonment shall be
7 determined by the Hawaii paroling authority in accordance with
8 section 706-669; provided that a young adult defendant who is a
9 repeat offender under section 706-606.5 shall serve at least the
10 applicable mandatory minimum term of imprisonment, which shall
11 not exceed twenty-five years. During the minimum imprisonment
12 term, the young adult defendant shall be incarcerated separately
13 from career criminals, when practicable."

14 SECTION 8. Section 706-672, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§706-672 Place of imprisonment. When a person is
17 sentenced to imprisonment, the court shall commit the person to
18 the custody of the department of public safety for the term of
19 the person's sentence and until released in accordance with law.
20 The director of public safety shall determine the proper program
21 of redirection and any place of confinement of the committed
22 person[-]; provided that no young adult defendant as defined



1 under section 706-667 shall be transported out of state to serve
2 any portion of the defendant's imprisonment for an offense
3 committed and adjudicated in the State."

4 SECTION 9. (a) There is established within the department
5 of public safety for administrative purposes the temporary young
6 adult rehabilitation advisory group. The advisory group shall
7 advise the department of public safety on the implementation of
8 the programs created through the young adult rehabilitation
9 special fund.

10 (b) The following or their designated representatives
11 shall be members of the advisory group:

- 12 (1) The director of public safety;
- 13 (2) The chief justice of the supreme court;
- 14 (3) The director of the office of youth services;
- 15 (4) The director of health;
- 16 (5) The president of the University of Hawaii system;
- 17 (6) The superintendent of education;
- 18 (7) The senior family court judge; and
- 19 (8) At least two community representatives to be selected
20 by the governor.

21 The young adult rehabilitation advisory group shall select
22 a chair from among its members.



1 (c) Members of the young adult rehabilitation advisory
2 group shall serve without compensation but shall be entitled to
3 reimbursement for necessary expenses while attending meetings
4 and while in discharge of their duties.

5 (d) The advisory group shall submit to the legislature a
6 report of its findings, descriptions of the programs and
7 initiatives implemented through the young adult rehabilitation
8 special fund, the effectiveness of those programs and
9 initiatives, and any other matters relating to rehabilitation as
10 determined by the director of public safety, no later than
11 twenty days prior to the convening of the regular sessions of
12 2015 to 2017.

13 (e) The advisory group shall cease to exist on June 30,
14 2017.

15 SECTION 10. There is appropriated out of the general
16 revenues of the State of Hawaii the sum of \$ or so much
17 thereof as may be necessary for fiscal year 2014-2015 for the
18 implementation of this Act.

19 The sum appropriated shall be expended by the department of
20 public safety for the purposes of this Act.



1 SECTION 11. This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun before its effective date.

4 SECTION 12. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 13. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 14. This Act shall take effect on July 1, 2050.



Report Title:

Young Adult Defendants; Department of Public Safety; Life Sentences without Parole; Appropriation

Description:

Establishes the young adult rehabilitation special fund. Exempts young adult defendants from life sentence without parole. Prohibits young adult defendants from being transported out of state. Establishes temporary young adult rehabilitation advisory group. Makes an appropriation. Effective July 1, 2050. (HB1785 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

